Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)))	
Bridging the Digital Divide for Low-Income Consumers	)))	WC Docket No. 17-287
Lifeline and Link Up Reform and Modernization	))	WC Docket No. 11-42
Telecommunications Carriers Eligible for Universal Service Support	)))))	WC Docket No. 09-197

COMMENTS OF THE NEBRASKA PUBLIC SERVICE COMMISSION

The Nebraska Public Service Commission (NPSC) hereby submits these comments in response to the Commission's Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry adopted on November 16, 2017 and released on December 1, 2017.[1] The NPSC appreciates the opportunity to comment on the issues raised in this proceeding.

The NPSC established a Lifeline program effective January 1, 1998. The NPSC provided state support for Lifeline effective September 1, 1999. As discussed further in these comments, the NPSC administers the Lifeline program in Nebraska. As such it has an interest in providing the benefit of support to eligible consumers in the most effective and efficient manner possible.

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[1] *In the Matter of Bridging the Digital Divide for Low-Income Consumers et al.*, Fourth Report and Order et al., WC 17-287 *et al.* Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry (rel. December 1, 2017)("*2017 NPRM*").

Respecting the States' Role in Program Administration

In the Notice of Proposed Rulemaking, the Commission seeks comment on ways the Commission can better accommodate the important role of the states in the Lifeline Program.[2] The NPSC applauds the Commission for recognizing the states' lawful role in designating eligible telecommunications carriers (ETCs) as well as the important role states play in addressing waste, fraud, and abuse. The NPSC fully supports reversal of the preemption imposed by the *2016 Lifeline Order*.[3] Because the NPSC believed the preemption was unlawful, it joined the coalition of states challenging the *2016 Lifeline Order*. Section 214 of the Act is clear in giving states the primary responsibility to designate ETCs. Accordingly, the Commission should find ETCs shall be designated through traditional (or pre-existing) state and federal roles either for the purposes of only Lifeline or for both high-cost and Lifeline. In that regard, the NPSC takes this responsibility very seriously. Between 2016 and 2017 the NPSC received three applications for Lifeline-only ETC designation. The NPSC denied the application of one prepaid wireless reseller and another agreed to withdraw its ETC application based upon concerns that were raised prior to hearing. The NPSC granted one prepaid wireless reseller application finding the applicant had met all state and federal criteria and that designation was in the public interest.

Further, the NPSC supports the elimination of the stand-alone LBP designation. The NPSC provides supplemental Lifeline support in the amount of $3.50 per month per line through its state universal service program. However, the NPSC, rather than the carrier, determines initial and continued eligibility, in partial coordination with the Nebraska Department of Health and Human

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[2] *2017 NPRM* at para. 54.

[3] *See Lifeline and Link Up Reform and Modernization et al.*, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, paras. 229-58 (2016) (*2016 Lifeline Order*).

Services (HHS), and through the requirement of documentation for programs that are not administered by HHS. Because of the manner in which stand-alone LBPs were carved out from the state Lifeline process, the Commission's proposal to create a separate designation process raised significant concerns. First, the NPSC has a fact-finding process for designating ETCs. In almost every case, Lifeline designation is preceded by a hearing where certain information relative to the marketing and operational practices is obtained. In many cases conditions are imposed to protect the integrity of the state and federal support mechanism.[4] Under the Commission's proposed framework, however, consumer eligibility would not have been determined by the NPSC, but by the carriers, potentially increasing the likelihood of duplication and abuse. Second, some subscribers would receive a different Lifeline discount—those under an ETC designation for Nebraska would have received supplemental support from our universal service fund, while others receiving only a federal designation would have been eligible only for the federal discount. Moreover, some consumers would have had the ability for NPSC assistance with billing and service quality issues by virtue of conditions associated with Nebraska ETC designation while carriers approved for LBP designation would have no incentive to work with the NPSC to resolve consumer issues. The NPSC would not have jurisdiction to ensure consumers were appropriately receiving the Lifeline discount and that the supported services were actually being provided to only consumers that are qualified for Lifeline. Finally, we note our concern that some LBP applicants would be carriers that simply wanted to circumvent the NPSC's subscriber validation and certification process.

[4] Because the NPSC certifies and re-certifies enrollment, providers are required to provide information to compare the number of Lifeline participants, addresses, telephone numbers, as well as continued eligibility.

The framework proposed in the Commission's *2016 Lifeline Order* would frustrate a number of policies and procedures the NPSC implemented in order to minimize the opportunity for fraud and abuse of the program. Accordingly, the NPSC supports the elimination of the stand-alone LBP designation.

Proposed Elimination of Support for Non-Facilities-Based Providers

The Commission also sought comment on a proposal to discontinue Lifeline support for non-facilities-based service providers.[5] The NPSC opposes this proposal. Rather than broadly eliminating support for all non-facilities-based providers, the NPSC recommends the Commission take measured action to address waste, fraud, and abuse as it occurs.

To effectively carry out the purpose of the Lifeline program making it possible for low-income consumers to have access to reasonably comparable telecommunications services at affordable rates, the Commission must account for the way in which consumers want to have services delivered. CTIA points out that adults living in poverty and near poverty were more likely than higher income adults to be living in households with only wireless telephones.[6] Significantly for many, the Lifeline program acts as a temporary means to retain the ability to communicate with family, potential employers, and access emergency services. Through the advantages offered by prepaid wireless service, millions of consumers have been able to stay connected despite individual hardship due to sudden financial loss or temporary displacement. For others, the vicious cycle of poverty makes it difficult for to commit to a long-term service plan.

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[5] *See 2017 NPRM* at paras. 67-73.

[6] *See* Letter from Meredith Attwell Baker for CTIA (November 8, 2017) at 2 n.1 (internal citations omitted).

In 2005, recognizing the evolving nature in the way in which consumers use communications services, the Commission permitted non-facilities based providers, including prepaid wireless carriers, to obtain low-income support from the Universal Service Fund on a case-by-case basis.[7] The Commission found this approval was consistent with the statutory goals of the program.[8] Specifically, the Commission found the "facilities requirement impedes greater utilization of Lifeline-supported services provided by a pure wireless reseller."[9] In addition, the Commission found a prepaid feature may be an attractive alternative for such consumers who need the mobility, security, and convenience of a wireless phone but who are concerned about usage charges or long-term contracts.[10] In applying its forbearance, the Commission found the statutory goals of universal service in § 254 in the context of low-income consumers and in § 214(e) as it relates to qualifying for federal low-income universal service support would be furthered by eliminating the facilities requirement.[11]

In 2010, competitive providers received nearly 55 percent of total program support.[12] The Commission found that 92 percent of Americans subscribed to mobile phone service and that more than 30 percent of adults in the general population live in households with only wireless phones.[13]

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[7] *See* In *the Matter of Federal-State Joint Board on Universal Service; Petition of TracFone Wireless Inc. for Forbearance from 47 U.S.C. Section 214(e)(1)(A) and 47 C.F.R. Section 54.201(i),* CC Docket No. 96-45. 20 FCC Rcd 15095 (September 8 2005) at para 6.

[8] *See id.*at para. 10.

[9] *Id.* at 9.

[10] *See id.*

[11] *See id.*

[12] See *In the Matter of Lifeline and Link Up Reform and Modernization et al.* WC Docket No. 11-42 et al., Report and Order and Further Notice of Proposed Rulemaking (February 6, 2012) at para. 21. ("*2012 Lifeline Order*").

[13] *Id.*

Currently, more than 69 percent of low-income families in the Lifeline program use non-facilities-based services and 76 percent of wireless Lifeline subscribers receive their service from a reseller.[14]

The NPSC recognizes that the Commission's motive in making this proposal is the fraud and abuse that has plagued the Lifeline program in recent years.[15] However, the Commission should not punish all for the acts of some. The consequence of the Commission's proposal would be to punish consumers who currently rely on Lifeline service. Further, the Commission's proposal will make it more difficult for low-income consumers to obtain wireless connectivity. Several of our major market carriers no longer provide Lifeline as an ETC.[16] In Nebraska, for example, in some areas of the state, wireless resellers may be the ***only*** wireless Lifeline option. Unfortunately, we believe the impact of this proposal will be to reduce comparable and competitive choices in the market for Lifeline consumers contrary to the goals of the Act. The harmful effects of the proposal to eliminate support for non-facilities-based providers significantly outweighs the perceived benefits to the Lifeline Program.

The Commission has already undertaken a number of steps to improve the accountability of the program. We urge you continue down that path. Instead, the Commission should focus its efforts to tighten the framework to eliminate the potential for abuse as it relates to all providers.

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[14] *See* Letter from John J. Heitmann counsel for Lifeline Connects Coalition et al., to Marlene Dortch, Secretary, FCC, WC Docket Nos. 17-287, 11-42, 09-197 (November 13, 2017).

[15] The NPSC submits that ETCs which have been found to have intentionally defrauded the program should face severe penalties and be barred from receiving Lifeline support going forward. We further believe the Commission and state commissions have a joint responsibility to carry out the requirements of § 254. Accordingly, we recommend increasing federal and state coordination to share information, and collaborate on enforcement in response to suspected fraud and abuse.

[16] *See e.g., In the Matter of the Application of Alltel Communications of Nebraska, Inc. d/b/a Verizon Wireless, Minneapolis, Minnesota, Seeking Authority to Relinquish its Eligible Telecommunications Carrier Designation.* Application No. C-4522, Granted (November 19, 2012).

The Commission should first attempt more targeted measures to curb the incentive for abuse without harming the millions of consumers that currently rely on these services. One such action could be to apply strict penalties, such as temporary or permanent debarment to deter fraudulent activity. In addition, the Commission could set strict rules relative to third party agent commissions which is the business structure used by some carriers to aggressively enroll subscribers. Further, despite the Commission's guidance on this, some ETCs' business models exclusively (or almost exclusively) target the Lifeline market. While that alone does not indicate fraud or bad motives, it certainly raises concerns about how lucrative the Lifeline market can be. Lifeline support should be reimbursement tool for costs associated with the discount provided. It should not be a mechanism that serves as a basis for an entire for-profit business model.[17] Finally, more explicit coordination among the Commission and state commissions can help reduce or eliminate the potential for fraud and abuse in the program.

The Voice Component of the Lifeline Program Should be Retained

The NPSC recommends the Commission retain voice service as a supported service in the Lifeline program. While broadband deployment and adoption has been a key focus for over a decade, there are still consumers that have not found the need to subscribe to services beyond stand-alone voice services. This is particularly true for our aging rural population. Maintaining the voice-only component of Lifeline service not only promotes consumer choice, it promotes public safety. For many, Lifeline voice services are the only means in which a subscriber can

[17] *See In the Matter of Lifeline and Link Up Reform and Modernization et al.,* WC Docket No. 11-42 *et al.*, Notice of Proposed Rulemaking, FCC 11-32 (rel. March 4, 2011) at para. 14 (stating the program originally was designed to allow companies to be made whole for foregone revenues associated with discounts provided to eligible Lifeline/Link Up consumers and that the program was never intended to provide a profit for service providers).

access emergency services. The Commission should reconsider the phase out of support for voice service, particularly in areas of the state where there is only one Lifeline provider.

The Recertification Rules Should be Revised

The Commission seeks comment on prohibiting subscribers from self-certifying their continued eligibility during the Lifeline program's annual recertification process if the consumer is no longer participating in the program they used to demonstrate their initial eligibility for the program.[18] The NPSC supports the proposal to require that documentation be submitted when the subscriber seeks to recertify under a different program than the one through which they initially demonstrated eligibility and where eligibility cannot be recertified through an eligibility database. The NPSC conducts recertification for all Lifeline subscribers in Nebraska and requires documentation when the subscriber cannot be recertified through eligibility data for the SNAP and Medicaid programs.

The recent Government Accountability Office (GAO) examination of the Lifeline program compared the subscribers on the Lifeline program against eligibility databases for a few eligibility programs in a sample of states. Nebraska Lifeline subscribers listed as enrolled in Medicaid in the National Lifeline Accountability Database (NLAD) were compared against a database of Nebraska Medicaid recipients.[19] The NPSC manages Lifeline program enrollment and checks Nebraska Health and Human Services (HHS) databases to determine if Lifeline applicants are enrolled in Medicaid or Supplemental Nutrition Assistance Program (SNAP) prior to allowing eligible telecommunications carriers (ETCs) to enroll subscribers in Lifeline. Despite the fact that the

[18] *2017 NPRM* at para. 97.

[19] United States Government Accountability Office, Additional Action Needed to Address Significant Risks in the FCC's Lifeline Program, GAO-17-538, May 2017 at p. 40.

HHS database is examined for program participation prior to Lifeline enrollment, 15.14 percent of the Nebraska Lifeline subscribers which were listed as participating the in the Medicaid program in the NLAD did not match with the database used by the GAO for Medicaid participation. There are several potential reasons for this mismatch, including data entry errors and use of a different dataset by the NPSC and the GAO. However, given the fact that Lifeline subscribers may discontinue participation in one qualifying program but still be eligible by participating in another program, it is also possible that the subscribers were no longer on Medicaid at the time of the review, but still qualified under another program. ETCs are not required to update the qualifying program for Lifeline recipients in the NLAD after recertification. Therefore, the Lifeline recipient may still be eligible, but not on the program under which he/she initially qualified.

The NPSC believes that only eligible subscribers should receive Lifeline assistance. The foregoing discussion illustrates that Lifeline subscribers may qualify under different eligibility programs at different times. However, the NPSC believes that eligibility should be determined by a database or documentation at the time of recertification. It seems counterproductive to invest the resources and effort into building the National Verifier to verify eligibility at enrollment, without also continuing to verify eligibility at the time of recertification.

The National Verifier Process Should Include State Involvement

The Commission seeks comment on partnering with states for successful implementation of the National Verifier.[20] Specifically, the Commission seeks comment on ways states can be encouraged to work cooperatively with the Commission and USAC to integrate their state

[20] *See 2017 NPRM* at paras. 59-61.

databases into the National Verifier without unnecessary delay.[21] The NPSC recommends that the Commission and USAC should coordinate with public utility commissions in each state as they seek to integrate state databases into the National Verifier.

Some state commissions have already developed databases of eligible Lifeline subscribers based upon participation in eligible programs. The Commission and USAC may benefit greatly from the development work that was performed to create these databases. In order to develop the state eligibility databases, the developers of the these databases would have needed to address many of the same questions concerning the data and processes that would need to be answered in order to integrate the state data into the National Verifier. Therefore, coordination with these states should reduce the time to implement the National Verifier in states with eligibility databases.

Other state commissions, such as Nebraska, interface with their states' social service agency to obtain eligibility data prior to enrolling subscribers into the Lifeline program. These states have contacts with social service agency staff that will be necessary to integrate state data into the National Verifier. As such, working with the state regulatory commission staff should expedite the process of identifying the relevant staff and resources at state social service agencies.

State commissions that do not have their own eligibility databases or do not currently access social service program data are also valuable partners in implementing the National Verifier. State commission staff have knowledge of the Lifeline program and can serve as a contact with the respective state social service agencies to explain the importance of the Lifeline program to subscribers in the state and therefore the importance of successful integration with the National Verifier. As implementation of the National Verifier approaches in the respective states,

[21] *See id.* at para. 60.

the state commission staff can also serve as a resource to inform ETCs and potential Lifeline subscribers of changes that will occur in the enrollment process as the state is integrated into the National Verifier.

All states should receive reasonable compensation for the costs associated with integrating their state social service program data into the National Verifier. Costs for state data to implement the National Verifier will be offset over the long run by eliminating the enrollment of ineligible subscribers.

Conclusion

The NPSC supports the Commission's proposal to reverse the preemptive effects of the *2016 Lifeline Order.* We encourage the Commission to keep the voice component intact as well as the current eligibility of reseller participation in the Lifeline program. Coordinating existing state resources is key to the success of the National Verifier. The NPSC appreciates the opportunity to comment in this matter and looks forward to further coordinating our efforts in closing the digital divide for our most vulnerable consumers.

Dated: February 21, 2018.

Respectfully submitted,

Nebraska Public Service Commission

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